

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FREDERICK BUSH,)	
Petitioner,)	
)	C.A. No. 04-12122-JLT
v.)	(USCA 05-2260)
)	
JOSEPH D. McDONALD,)	
Respondent.)	

ORDER ON MOTION FOR LEAVE TO PROCEED
ON APPEAL *IN FORMA PAUPERIS* (#31)

TAURO, D.J.

On October 25, 2006, the United States Court of Appeals for the First Circuit transmitted Petitioner's Affidavit of indigency and prison account statement to this Court, with instructions that the filing be treated as a re-submittal of his Motion for Leave to Proceed on Appeal *in forma pauperis*, pursuant to this Court's Order (#24) of September 27, 2005.

Although the renewed Motion for Leave to Proceed on Appeal *in forma pauperis* (#31) was dated August 8, 2006, almost eleven (11) months after this Court's Order (#24), the Affidavit filed by Petitioner otherwise appears to be in order, and is accompanied by a certified prison account statement.

A review of the Petitioner's financial disclosures, however, indicates that he has some assets. More specifically, he has a balance of \$137.53 to his credit in his inmate account at the Plymouth County Correctional Facility. He also has \$500 in savings at the Laconia Savings Bank, and there is no indication from the submissions that Petitioner does not have access to those bank funds. Additionally, Petitioner's prison account statement reflects deposits of periodic payments of between \$200-\$500 from Cindy Bush, and that Petitioner makes substantial purchases from the prison commissary.

In light of these financial disclosures, the Court finds that Petitioner has failed to demonstrate sufficiently that he lacks funds from which to pay the \$255 appellate filing fee.¹ Accordingly, Petitioner's Motion for Leave to Appeal *in forma pauperis* (#31) is hereby Denied without prejudice to seeking reconsideration within thirty (30) days of the date of this Order, upon a good faith showing, after due diligence, that he was unable to gain access to funds located in his savings account at the Laconia Savings Bank for use in payment of the filing fee for the appeal of this action, and that he is unable to use funds provided by Cindy Bush toward the payment of the appellate filing fee in lieu of prison purchases.

SO ORDERED.

/s/ Joseph L. Tauro
JOSEPH L. TAURO
UNITED STATES DISTRICT JUDGE

DATED: November 17, 2006

¹At the time of Petitioner's Notice of Appeal (#18), filed August 9, 2005, the filing fee for an appeal was \$255.